

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

March 6, 2003

A meeting of the Board of Environmental Protection was held on Thursday, March 6, 2003, at the Holiday Inn / Ground Round facility in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

**Board:** Ernest Hilton, Melford Pelletier, John Tewhey, Virginia Plummer, Richard Wardwell, Katharine Littlefield, and Jean T. Wilkinson

**Absent:** Irving Faunce, John Marsh and Nancy Ziegler

**Others:** Brooke E. Barnes, Deputy Commissioner  
Jerry Reid, Assistant Attorney General  
Cynthia S. Bertocci, Executive Analyst  
Terry Hanson, Administrative Assistant

*(Meeting adjourned at approximately 12:30 p.m.)*

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:** Brooke Barnes, Deputy Commissioner reports the following:

Legislation:

*-Electronic Waste Collection:* Legislature will hold a public hearing to receive comments on a proposed bill that would require waste collection of electronic products by the manufacturer (e.g. videos, computers, toys...). This represents thousands of products and requires annual reporting through a detailed system. The Department supports the bill in concept, but is concerned about the scope.

*-Sludge/Hydro:* Legislature will be weighing the issue of local control as it considers whether municipalities should be allowed to have more stringent standards than the State on matters such as regulation of land application of sludge and removal of hydropower dams.

*-Public Hearings:* Next week the Joint Standing Committee will hold public hearings on several bills including bills which address climate change, water withdrawal, and collection of dental amalgam. Friday, March 14<sup>th</sup> the Committee will hold a work session on several air toxics bills. The focus will be on review of the State's air toxics policy and the municipalities role in the regulation of facilities such as MERC.

*-LD1034: An Act To Require Certain Agencies To Track Votes of Board and Commission Members:* This proposed bill applies to the Board of Environmental Protection and LURC Commission and would require the tracking of votes by each individual member. The Department will provide testimony neither for nor against, offering to post the Board's minutes on the Board web-site.

Budget: The Department presented its budget reduction scenario to the Appropriations Committee. The Joint Standing Committee on Natural Resources will consider our reductions at the end of next week. Some outside entities (e.g. Casco Bay Estuary and Joint Environmental Training Coordinated Committee) will be directly affected by the proposed cuts since the Department provides grant support to some of their programs. A decision on the proposed cuts is not expected until the end of the session. The Department's goal is to maintain service delivery, keep front line activities intact and limit lay-offs.

**Questions:**

Board member John Tewhey asked for more information about the proposed Legislative Bill sponsored by Representative Daigle that affects rulemaking.

*Deputy Commissioner Barnes advised that LD 517 To Ensure Legislative Oversight of Major Environmental Policy. Proposals will be discussed during a work session of the Joint Standing Committee on Natural Resources today. The Bill is intended to provide legislative oversight on environmental policy and would require that any state rulemaking initiative that is more stringent than federal requirements would be a major substantive rule. Many of the Department's rules could be captured under this provision at an increased cost of approximately \$4/\$5K per rulemaking initiative. Many questions exist regarding the parameters of this initiative and whether they will be applied to rules that are proposed where no federal requirements exist, or if state requirements are just different than federal requirements.*

Board member John Tewhey expressed an interest in getting an update on the next step options for the Hannum and Uliano court cases.

*Executive Analyst Bertocci advised the Board that the Superior Court upheld the decision of the Board in each case. Hannun has been appealed to the Maine Supreme Judicial Court. Uliano may also be appealed to the Maine Supreme Judicial Court.*

- B. CHAIRMAN’S COMMENTS:** Board member John Tewhey requested participation by Board members regarding the 2002 evaluation of Cynthia Bertocci. Any member wishing to submit comments to him regarding Ms. Bertocci’s performance should do so by March 20<sup>th</sup>.
- C. EXECUTIVE ANALYST COMMENTS:** Chapter 315, Scenic Rule. Cynthia Bertocci explained that the Department would like the Board to reschedule the public hearing on Chapter 315, Assessing and Mitigating Impacts to Existing Scenic and Aesthetic Uses currently scheduled for March 20, 2003. This request is being made to ensure that the Board has sufficient time to consider the remaining issues associated with the Widewater Stillwater application for retail development.

The Board voted (7-0-0-3) on a motion to reschedule Chapter 315 to April 3, 2003 at 1:30 p.m. at the Holiday Inn / Ground Round, Augusta. The vote was taken pursuant to 38 M.R.S.A. Section 341. Board members John Tewhey, Ernest Hilton, Melford Pelletier, Katharine Littlefield, Virginia Plummer, Richard Wardwell and Jean T. Wilkinson voted to support the motion. Board members John Marsh, Irving Faunce and Nancy Ziegler were absent.

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|--------------------------------|----------|
| <b>D. BOARD CALENDAR:</b>      | Reviewed |
| <b>E. DEPARTMENTAL ORDERS:</b> | Reviewed |
| <b>F. EXECUTIVE SESSION:</b>   | None     |

## II CONSENT AGENDA ITEMS

The Board voted (7-0-0-3) on a motion to approve consent agenda items 2, 4, and 5 as presented and to table item 1 directing the Department to provide additional detail on assessment of the penalty amount.

1. **WILLIAM J. DONAHUE, Scarborough - Administrative Consent Agreement (BLWQ-Land). Tabled**
2. MARY ANNE OSGOOD, Limerick - Administrative Consent Agreement (BLWQ-Land)
4. TOWN OF OAKFIELD, Oakfield – Administrative Consent Agreement and Enforcement Order (BLWQ-Land)
5. LEO PURINGTON, West Gardiner – Administrative Consent Agreement and Enforcement Order (BLWQ-Land)

The Board voted (7-0-0-3) to approve consent agenda item 3 with the following amendment:

*Paragraph 11: ... all actions listed in Paragraph 9 **10** of this Agreement are...*

3. JOHN HOLMES and BELFAST BOATYARD, Belfast – Administrative Consent Agreement and Enforcement Order (BLWQ-Land)

### III. Regular Agenda

1. GTE OPERATIONS SUPPORT INC. and CONTROL DEVICES, INC. / DRAFT POST CLOSURE HAZARDOUS WASTE FACILITY (approval / 45 day public comment period)

The Board voted (6-1-0-3) on a motion to post to 45-day comment the proposed post closure of hazardous waste facility for GTE Operations Support Inc. and Control Devices, Inc., with the following amendments:

*...chlorinated volatiles of active private drinking water wells located within... (Page 34, paragraph T)*  
*...round of sampling of active private drinking water wells located within... (Page 38, paragraph 11)*  
*...chlorinated volatiles of active private drinking water wells located within...(Page 43, paragraph 13)*

The vote was taken pursuant to 38 M.R.S.A. 1319-R and 06-096 CMR Chapters 850-857. Board members Ernest Hilton, Melford Pelletier, Katharine Littlefield, Virginia Plummer, Richard Wardwell, and John Tewhey voted to support the motion. Board member Jean T. Wilkinson voted opposed. Board members John Marsh, Irving Faunce and Nancy Ziegler were absent. Staff member: Stacy Ladner, Bureau of Remediation and Waste Management

2. CHAPTER 2, RULES CONCERNING THE PROCESSING OF APPLICATIONS AND OTHER ADMINISTRATIVE MATTERS / REPEAL AND REPLACE (adoption)

The Board voted (6-1-0-3) on a motion to adopt Chapter 2, Rules Concerning the Processing of Application and Other Administrative Matters for repeal and replacement with the following amendments:

**Definitions A. Abutter:** ... within 1 mile of the delineated project boundary ~~on which the project will take place~~, including

**B. Appeal to the Board of Commissioner's decision**

Paragraph 3 ...response to the appeal must be filed within ~~15~~ 30 days of filing the appeal.

...evidence within 45 days of the filing of the appeal

Paragraph 4 ...respondent must be filed within ~~15~~ 30 days of filing of the appeal.

... evidence within ~~25~~ 45 days of the filing of the appeal.

Paragraph 5 ...no later than ~~30~~ 50 days after the filing of the appeal.

**Response to Comments paragraph (2)**

...property that is both ~~contiguous~~ adjoining to and within...

...project with the need for a sensible...

...property owners ~~adjacent~~ adjoining to the parcel,...

**Response to Comments paragraph (11)**

...hearing on a ~~draft~~ draft order

The vote was taken pursuant to 38 M.R.S.A. Section 341. Board members Ernest Hilton, Melford Pelletier, Virginia Plummer, Richard Wardwell, John Tewhey, and Jean T. Wilkinson voted to support the motion. Board member Katharine Littlefield voted opposed. Board members John Marsh, Irving Faunce and Nancy Ziegler were absent. Staff member: Brooke E. Barnes, Office of the Commissioner.

3. MEAD TAX CERTIFICATION / TOWN OF MEXICO (Consent Order – Approval).

The Board voted (6-0-0-4) on a motion to ratify the terms and conditions defined in the consent order between Mead Oxford Corporation and the Town of Mexico with the following amendments:

1) *Directed staff to further define “Parties” as only the “Appellant” and “Appellee”.*

2) *Move paragraph 9 to paragraph 11 and renumber paragraphs: old #10 becomes paragraph #9, old #11 becomes paragraph #10, old #9 becomes paragraph #11*

*new paragraph 9 amendments:*

*The **parties have agreed** that the equipment that currently...*

*...and associated equipment that **the parties have agreed** is not eligible...*

*new paragraph 11 amendments:*

*...contained in paragraph ~~10~~9 of this Consent Order.*

5) *Replace the word “approval” with “ratify/ratification”*

The vote was taken pursuant to 38 MRSA section 341-D(4) and 5 M.R.S.A. § 9053(2). Board members Ernest Hilton, Melford Pelletier, Katharine Littlefield, Richard Wardwell, John Tewhey and Jean T. Wilkinson voted to support the motion. Board members John Marsh, Irving Faunce, Nancy Ziegler and Virginia Plummer were absent. Staff: James Dusch, Office of the Commissioner.

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**Public Hearing:**

1:30 p.m. public hearing in the matter of:  
Chapter 355, Coastal Sand Dunes / Amendment

*Public Hearing ended at approximately 4:25 p.m.*